THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.20405 OF 2005

Dated: 1st December, 2005.

Between:

Sri Sai Srinivasa Constructions, 1-712,

Dwarakanagar Colony, Kadapa, rep. by

Its Managing Partner R. Srinivasa Reddy,

S/o. Rajagopal Reddy, aged about 38 years,

R/o.1-712, Dwaraka Nagar, Kadapa. … Petitioner

And

1. Govt. of A.P., Roads & Buildings Department,

   Secretariat, Hyderabad, rep. by its Secretary,

   And two others. … Respondents

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ORDER :

This writ petition is filed seeking a declaration that the order of the 2nd respondent – Engineer-in-Chief (R&B), Administration and NABARD, Erramanzil, Hyderabad, dated 20-08-2005 as arbitrary and illegal.

The petitioner firm claims to have been engaged in the business of civil contract works having experience in the contract works of the Government for the past six years in various parts of the State. In response to the Tender Notice issued by the second respondent inviting tenders for doing various works in the State of Andhra Pradesh, the petitioner has submitted its bid together with ten experience certificates issued by the competent authority. It appears that the third respondent – Superintending Engineer (R & B) Kadapa Circle has called for opinion from the concerned Executive Engineers with regard to genuineness of the said certificates. Among the same, insofar as one certificate is concerned, instead of two financial years it appears that the concerned Executive Engineer had issued the certificate for only one year. The said certificate was not accepted by the respondents on the ground that the work had been done in two financial years and accordingly the technical bids of the petitioner were not opened. Aggrieved by the same, the petitioner filed W.P.No.1810 of 2005. The said writ petition was dismissed, however this Court observed that it was negligent mistake on the part of Issuing Authority. The petitioner preferred W.A.No.353 of 2005 which is still pending and the interim order directing stay of award of the contract is also in force. That apart, the petitioner filed W.P.No.9856 of 2005 aggrieved by the action of the respondents in not considering the tender of the petitioner for other works on the ground that a proposal has been made for black-listing of the petitioner. In the said writ petition, this Court vide order dated 29-4-2005 directed the third respondent to consider the tender of the petitioner.

The petitioner alleges that in spite of the said order, the tender of the petitioner has not been considered. On the other hand, the second respondent issued a show-cause notice dated 4-6-2005 calling upon the petitioner to show-cause as to why the petitioner firm should not be black-listed on the ground that the certificate produced by the petitioner firm was not genuine and the same was produced in order to secure advantage of the contract. The petitioner submitted a detailed explanation denying

the allegations and specifically pleading that the petitioner firm had not produced any false certificate but he had merely enclosed the certificate issued by the concerned Executive Engineer. However, the 1st respondent failed to consider the explanation offered by the petitioner in proper perspective and passed the impugned order of black-listing holding that the petitioner had produced false experience certificate in order to secure advantage of the contract. Questioning the same, this writ petition is filed contending that there is absolutely no material to conclude that the petitioner firm had produced the certificate in question deliberately to gain advantage. It is also contended that even if the quantities mentioned in the certificate in question are taken for one year, it will not affect over all eligibility of the petitioner firm. Hence, the allegation that the petitioner had deliberately produced false experience certificate in order to secure advantage of the contract is absolutely false and without any basis.

On behalf of the respondents, a counter-affidavit has been filed by the Superintending Engineer, R & B, Kadapa Circle stating that the 3rd respondent had called for the necessary opinion in respect of 10 experience certificates uploaded by the petitioner, from the concerned issuing officers and the confirmation of genuineness of all the issuing officers except from one Executive Engineer, R & B, Kadapa, were received. In response to the confirmation letter, the Executive Engineer, Kadapa had furnished the works and year-wise breakups both physical and financial for the work executed by the petitioner firm from which it was found that out of the four works covered by the said certificate, the quantities exhibited against the work at Sl.Nos.3 and 4 were tallying. In respect of the work at Sl.Nos.1 and 2, the total quantities were tallying with the measurement books, but they were executed in two different years namely 2002-2003 and 2003-2004. Hence, the certificate with the quantities uploaded as having been executed in one year i.e., 2003-2004 was not genuine. It is also contended that as per Clause 11 (b) of G.O.Ms.No.94, I & CAD (PW-COD) Department, dated 1-7-2003 even where a tenderer meets the qualification criteria, he shall be disqualified if he is found to have misled or made false representation in the statement submitted in proof of the qualification requirements. That apart, even while executing the work, if it is found that the contractor had produced a false certificate of experience, he will be black-listed and the work will be taken over invoking Clause 60 (a) of P.S. to APSS. In the circumstances after getting confirmation of the genuineness of the Experience

Certificate, the respondents recommended to take action against the petitioner firm for black-listing in terms of the said G.O.Ms.No.94, dated 1-7-2003. It is contended that the action taken by the respondents was in accordance with G.O.Ms.No.94, dated 1-7-2003 and therefore the interference by this Court is not warranted.

I have heard the learned Counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

It is not in dispute that as per G.O.Ms.No.94, dated 1-7-2003, the second respondent – Engineer-in-chief is the competent authority to order black-listing of the contractor on the ground of any fraudulent act. In the case on hand, the allegation against the petitioner is that while submitting the bids in response to the tender notice issued by the third respondent, the petitioner had produced a false certificate to substantiate his experience as required under the eligibility criteria. It is to be noted that one of the conditions under the eligibility criteria is that the applicant in its name and style should have during the preceding five financial years i.e., 1999-2000 to 2003-2004 satisfactorily completed as a prime contractor, similar works of value not less than the amount as notified in the tender notice. The petitioner along with his bid produced a certificate in relation to the works carried out by it for the financial year 2003-04 which was counter-signed by the concerned Superintending Engineer in which it was certified that the petitioner had satisfactorily completed the four works in R & B Division, Kadapa circle during the year 2003-04. However, on verification, it was found that the said four works were actually executed in two financial years namely 2002-03 and 2003-04. The petitioner pleads that actually the said works were carried out by it in one calendar year from January, 2003 to September, 2003 and it was a bona fide mistake committed by the concerned officials in mentioning in the certificate that the works were executed during the year 2003-04. The case of the respondents is that since the financial year was from 1st April to 31st March, the petitioner ought not to have shown the said four works which were actually executed in two financial years.

The learned Counsel for the petitioner submits that even if the break-up figures for each financial year are considered, the petitioner firm had admittedly satisfied the

prescribed conditions and therefore no motives can be attributed to the petitioner and the allegation that the certificate in question was produced deliberately to secure advantage is incorrect and unwarranted. It is also contended that at the most it is a mistake on the part of the authority who issued the certificate and under no circumstances it can be concluded that the certificate is either false or fabricated.

It is to be noted that the petitioner raised the very same plea in W.P.No.1810 of 2005 which was filed aggrieved by the action of the respondents in not opening the price bid of the petitioner firm on the ground that the petitioner produced a false certificate. This Court did not accept the said plea and observed that though there was no variation in the quantities in the works done by the petitioner and though the petitioner would not get any advantage by showing two more works in the financial year 2003-04, but at the same time it was a misleading certificate and it was not for this Court to probe into the matter as to the reasons for filing such certificate by the petitioner. W.A.No.353 of 2005 filed against the said order is still pending. In the circumstances, I do not find any justifiable reason to take a different opinion than that was expressed by this Court in W.P.No.1810 of 2005.

It is also to be noted that admittedly the petitioner firm furnished a declaration in its tender stating that it will abide by any penal action such as disqualification or black-listing or determination of contract or any other action deemed fit by the department if it is found that the statements, documents and certificates produced by them are false / fabricated. Hence, the petitioner is bound by the said declaration.

Since admittedly the certificate was found to be incorrect and misleading, the third respondent has rightly recommended for black-listing the petitioner. On the basis of the same, the second respondent, having obtained approval of the first respondent, the impugned order was passed which is in accordance with the provisions of G.O.Ms.No.94, dated 1-7-2003. Absolutely, no case is made out to hold that the said order is either arbitrary or illegal. In the absence of any allegation of mala fides or manifest error in the decision making process, the interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India is not

warranted.

Accordingly, the Writ Petition is dismissed. No costs.

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1st December, 2005.

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